IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 123 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI MARGHABHAI GOHEL

Versus

CHANDUBHAI CHHOTABHAI PATEL SINCE DECEASED THRO' HEIRS

Appearance:

MR MA BUKHARI for Petitioner No. 1

MS KJ BRAHMBHATT for Respondents No. 1/1-1/5

Respondent Nos. 2, 5,6, 7, 8/1 & 8/2 Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/01/2002

ORAL JUDGEMENT

Heard the learned advocates. The records and proceedings are called for and are perused.

The petitioner challenges the judgment and order dated 2nd August, 1984 passed by the learned Gujarat Revenue Tribunal [hereinafter referred to as, `the Tribunal'] in Revision Application No. TEN.B.A 1309 of 1980.

The dispute pertains to the lands bearing Survey No. 791, admeasuring 1 Acre 16 Gunthas and Survey No. 783, admeasuring 1 Acre 18 Gunthas, situated at Kanisa, Taluka Khambhat, District Kheda. Indisputably, the predecessor of the respondents nos. 1/1 to 1/5 - one Chhotabhai Karsandas Patel was the owner of the said lands and the deceased Marghabhai Becharbhai, the husband of the respondent no. 2 and the father of the petitioner and the respondents nos. 3 to 8 was the tenant thereof. The said Marghabhai Becharbhai on 7th September, 1976 moved an application before the Mamlatdar & ALT under Section 32 (1B) of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act']. The said Marghabhai Becharbhai claimed that the land, Survey No. 791, was being cultivated by him alongwith his father Bechar Natha since the year 1950-51. Thus, they were `protected tenants' of the said land. Their names appeared in the revenue records as `protected tenants' from the year 1951-52 till the year 1961-62. The owner of the said land Chandubhai Chhotabhai was residing at Africa. He had settled in India for some last five years and was carrying on business at village Kanisa. The said Chandubhai Chhotabhai, some three years before the date of the application, illegally took over the possession of the said land and ousted the said Marghabhai Becharbhai from the possession of the said land, Survey No. 791. The petitioner was, therefore, entitled to recover the possession of the said land under section 32 (1B) of the Act. In support of the said application were produced Village Form No. 7/12. A similar application was made by the said Marghabhai Becharbhai in respect of land bearing Survey No. 783. The said applications were contested by the said Chandubhai. The allegations made against the said Chandubhai were specifically denied. It was stated that the applicant Marghabhai Becharbhai was not the only heir of the said Bechar Natha but there were other heirs also. It was further stated that the proceedings under Section 32-G of the Act were conducted in presence of said Bechar Natha. The sale was declared to have become ineffective. The said lands thereafter were disposed of in accordance with Section 32-P of the Act and were given to the father of the said Chandubhai Chhotabhai for personal cultivation. Pursuant to the said order, possession of the said lands was handed over to the said Chhotabhai by

the Mamlatdar & ALT in presence of the panchas. In course of the proceedings before the Mamlatdar & ALT, the said Marghabhai Becharbhai and Chandubhai Chhotabhai gave their evidence and supported the pleadings. In the cross examination by the said Chandubhai, Marghabhai Becharbhai admitted that proceedings under section 32-G had been conducted. The possession of the lands was ordered to be handed over to the landlord. The parties were informed about the said order. Pursuant to the said order, the possession of the land, Survey No. 783 was handed over to the landlord. However, he was not aware that the possession of the land bearing Survey no. 783 was handed over in presence of the panchas, but admitted the panchnama produced by the said Chandubhai. The Mamlatdar & ALT under his order dated 27th September, 1976 was pleased to hold that the said lands were given to the land lord for personal cultivation. The possession was handed over to the landlord in presence of panchas. That in the proceeding under section 32-G of the Act, the sale had been declared ineffective. He, therefore, held that the possession of the lands was handed over to the landlord lawfully under section 32-P of the Act. It was also recorded that the landlord had not retained survey no. 791 for personal cultivation and had instead sold it off to one Budhabhai Khodabhai in breach of Section 32-P (7) and 32-P (8) of the Act. Feeling aggrieved by the said order, the petitioner Marghabhai Becharbhai preferred Tenancy Appeal No. 344 of 1976-77 before the Deputy Collector, Kheda. The Deputy Collector was, under his order dated 28th January, 1979, pleased to partially allow the appeal and to remand the matter to the Mamlatdar & ALT for examining the panch witnesses and for allowing opportunity to the tenant to cross-examine such panch witnesses. After the remand, the Mamlatdar & ALT examined the panch witness and the Talati. The Mamlatdar & ALT examined the Talati who produced the relevant records and also examined one of the panch witnesses-one Ambalal Dadbhai. The other panch Maganbhai Bhailalbhai could not be examined since he had already passed away. In view of the evidence of the Talati and the panch witness Ambalal Dadbhai and the records, the Mamlatdar & ALT, under his order dated 29th January, 1980, was pleased to hold that the possession of the said lands was handed over to the landlord lawfully for personal cultivation. Feeling aggrieved, the petitioner preferred Tenancy Appeal No.125 of 1980 before the Deputy Collector, Petlad which was dismissed on 29th January, 1980. The Revision Application No. TEN.B.A 109 of 1980 preferred before the Tribunal was dismissed on 2nd August, 1985. Therefore, the present petition.

The only question that arises for my consideration is whether the petitioner is entitled to the possession of the said lands under Section 32 (1B) of the Act. That necessarily raises the question whether the possession of the said lands was lawfully handed over to the landlord Chhotabhai Karsandas in exercise of power under Section 32-P of the Act, after sale having been declared ineffective under Section 32-G of the Act.

It is an admitted fact that the petitioner's father Becharbhai Nathabhai was the tenant of the said lands since the year 1951-52. They were in possession of the lands on the specified date i.e., 15th June, 1955 and were `protected tenants' as on the tiller's day ie., 1st April, 1957. The Tribunal and both the authorities below have recorded a categorical finding that the sale had been declared ineffective in the proceeding under Section 32-G of the Act. The said finding does not deserve to be interfered with in the present proceeding. As recorded hereinabove, the panchnama under which the possession was handed over to the landlord Chhotabhai Karsandas has been proved by the evidence of the panch-witness and also the records. Even the extracts of the village Form 7/12 show that the petitioner and the said Becharbhai Nathabhai were in possession of the lands till the year 1961-62 and since then, the landlord Chhotabhai Karsandas had cultivated the land personally. Handing over of the possession has also been admitted by the petitioner Marghabhai Becharbhai in his evidence before the Mamlatdar & ALT. Panchnama drawn on 8th March, 1962 has also been proved. Also produced on the records is the order dated 4th February, 1962 made by the Mamlatdar & ALT, Khambhat under Section 32-P of the Act, allowing the landlord to retain the said lands for personal cultivation. The order made as far back as in the year 1962 is presumed to have been made in accordance with law, unless the contrary is proved.

In above view of the matter, it is not believable that the possession of the said lands continued to be with the petitioner until 1975-76, as alleged or that the same was forcibly taken over by the respondent no. 1 in the year 1976, as alleged. In view of the concurrent findings recorded by the Tribunal and both the authorities below, undoubtedly, the landlord Chotabhai Karsandas, the father of the respondent no. 1 was lawfully handed over the possession of the said lands as far back as in the year 1962, in exercise of power

conferred under Section 32-P of the Act. Hence, the petitioner's claim for restoration of possession under section 32(1B) of the Act is not sustainable.

In view of the above discussion, the petition is dismissed. Rule is discharged. The parties shall bear their own costs. R&P to be returned to the Tribunal and the concerned authorities.

[Miss R.M Doshit, J.]

Prakash*